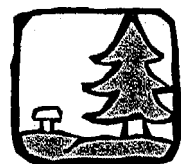


Attachment B. Excerpted Text from California Water Code



Excerpted Text from California Water Code

[Note: This attachment is provided for the convenience of the reader. It includes several provisions found in the California Water code on the subject of water transfers, as of January 1, 2000 . While the complete text of each section has been included, this document does not show the entire article or chapter of the Water Code in which the specific section is found. In some cases, an individual section may be limited or otherwise affected by other sections from the article or chapter which are not included here. For a complete understanding of the context of these water transfer sections, the reader should refer to the California Water Code. (See: <http://www.leginfo.ca.gov/cgi-bin/calawquery?codesection=wat&codebody=&hits=20>)]

§109.

(a) The Legislature hereby finds and declares that the growing water needs of the state require the use of water in an efficient manner and that the efficient use of water requires certainty in the definition of property rights to the use of water and transferability of such rights. It is hereby declared to be the established policy of this state to facilitate the voluntary transfer of water and water rights where consistent with the public welfare of the place of export and the place of import.

(b) The Legislature hereby directs the Department of Water Resources, the State Water Resources Control Board, and all other appropriate state agencies to encourage voluntary transfers of water and water rights, including, but not limited to, providing technical assistance to persons to identify and implement water conservation measures which will make additional water available for transfer.

§380.

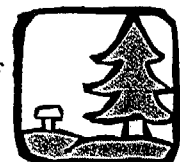
The Legislature hereby finds and declares as follows:

(a) The various regions of the state differ widely in the availability of water supplies and in the need for water to meet beneficial uses.

(b) Decisions regarding operations to meet water needs can depend in part upon regional differences.

(c) Many water management decisions can best be made at a local or regional level, to the end that local and regional operational flexibility will maximize efficient statewide use of water supplies.

(d) The authority granted by this chapter to local and regional public agencies, as defined in subdivision (a) of Section 65930 of the Government Code and not including federal agencies, is in furtherance of the policy declared in Section 2 of Article X of the California Constitution and in Section 109.



§381.

The authority of local or regional public agencies pursuant to this chapter shall control over any other provision of law which contains more stringent limitations on the authority of a particular public agency to serve water for use outside the agency, to the extent those other laws are inconsistent with the authority granted herein.

§382.

(a) Notwithstanding any other provision of law, every local or regional public agency authorized by law to serve water to the persons or entities within the service area of the agency may sell, lease, exchange, or otherwise transfer, for use outside the agency, either or both of the following:

(1) Water that is surplus to the needs of the water users of the agency.

(2) Water, the use of which is voluntarily foregone, during the period of the transfer, by a water user of the agency.

(b) This chapter does not prohibit or restrict the transfer of water or water rights by local or regional public agencies pursuant to other provisions of law.

§383.

For the purposes of this chapter, water that is surplus to the needs of the agency's water users shall mean any of the following:

(a) Water, to which the right is held by the agency pursuant to an appropriation made under the Water Commission Act or Division 2(commencing with Section 1000), which the agency finds will be in excess of the needs of water users within the agency for the duration of the transfer.

(b) Water, to which the right is held by the agency pursuant to an appropriation made under the Water Commission Act or Division 2 (commencing with Section 1000), of which any water user agrees with the agency, upon mutually satisfactory terms, to forego use for the duration of the transfer.

(c) Water, to which the right is held by a water user within the agency pursuant to an appropriation made under the Water Commission Act or Division 2 (commencing with Section 1000) where the water user and the agency agree, upon mutually satisfactory terms, that the water user will forego use for the period of time specified in the agreement and that the agency shall act as agent for the water user to effect the transfer.

§384.

Prior to serving water to any person for use outside the agency, the agency shall comply with all provisions of the general laws of this state relating to the transfer of water or water rights, including, but not limited to, procedural and substantive requirements governing any change in point of diversion, place of use, or purpose of use due to such transfer.

§385.

No water may be transferred pursuant to this chapter for use within the boundaries of a local or regional public agency that furnishes the same water service to the transferee without the prior consent of that agency.

§386.

The board may approve any change associated with a transfer pursuant to this chapter only if it finds that the change may be made without injuring any legal user of the water and without unreasonably affecting fish, wildlife, or other instream beneficial uses and does not unreasonably affect the overall economy of the area from which the water is being transferred.

A petitioner requesting a change which is subject to this section shall pay to the board a fee which shall be in an amount determined by the board to cover the reasonable costs of the board in evaluating and processing the petition.

§387.

Any agreement for the transfer of water under the provisions of this chapter shall be for a period not to exceed seven years unless a longer period of time is mutually agreed upon by the agency and the transferee.

§470.

This chapter shall be known as and may be cited as the Costa-Isenberg Water Transfer Act of 1986.

§475.

The Legislature hereby finds and declares that voluntary water transfers between water users can result in a more efficient use of water, benefitting both the buyer and the seller.

The Legislature further finds and declares that transfers of surplus water on an intermittent basis can help alleviate water shortages, save capital outlay development costs, and conserve water and energy.

The Legislature further finds and declares that it is in the public interest to conserve all available water resources, and that this interest requires the coordinated assistance of state agencies for voluntary water transfers to allow more intensive use of developed water resources in a manner that fully protects the interests of other entities which have rights to, or rely on, the water covered by a proposed transfer.

§480.

The department shall establish an ongoing program to facilitate the voluntary exchange or transfer of water and implement the various state laws that pertain to water transfers. The department shall seek to facilitate these transactions only if the water to be transferred is already developed and being diverted from a stream for beneficial use or has been conserved.

§481.

The department shall create and maintain a list of entities seeking to enter into water supply transfers, leases, exchanges, or other similar arrangements. In addition, the department shall maintain a list of the physical facilities which may be available to carry out water supply transfers.

§482.

The department shall prepare a water transfer guide which shall include, but not be limited to, all of the following:

- (a) A review of existing and appropriate state and federal laws that pertain to water transfers, water markets, or water rights.

(b) A list of persons or public agencies throughout the state involved in water management who could be helpful to those seeking assistance to transfer water.

(c) Information and resources which could be used to identify potential third-party impacts and mitigation alternatives, including economic, environmental, and legal issues related to the transfer of water.

(d) A description of the services available to water users from the department.

§483.

The department shall consult and coordinate its activities with other state boards, departments, agencies, or offices whose assistance may be desirable or necessary in carrying out the purposes of this chapter.

§484.

(a) The temporary transfer of any water or water right that otherwise would have been consumptively used or stored by the transferor in the absence of the temporary transfer, does not in anyway prejudice the transferor's right to the use of the water in the future.

(b) "Consumptively used," for purposes of this section, means the amount of water which has been consumed through use by evapotranspiration, has percolated underground, or has been otherwise removed from use in the downstream water supply as a result of direct diversion.

§1005.1.

Cessation of or reduction in the extraction of ground water by the owner of a right to extract, as the result of the use of an alternate supply of water from a nontributary source, shall be and is deemed equivalent to, and for purposes of establishing and maintaining any right to extract the ground water shall be construed to constitute, a reasonable beneficial use of the ground water to the extent and in the amount that water from the alternate source is applied to reasonable beneficial use, not exceeding, however, the amount of such reduction. Any such user of water from an alternate nontributary source who seeks the benefit of this section, shall file with the board, on or before December 31st of each calendar year, a statement of the amount of water from such source so applied to reasonable beneficial use pursuant to the provisions of this section during the next preceding water year (November 1st to October 31st), and such user cannot claim the benefit of this section for any water year for which such statement is not so filed.

"Ground water," for the purpose of this section and of Sections 1005.2 and 1005.4, means water beneath the surface of the ground, whether or not flowing through known and definite channels.

The term "nontributary source," as used in this section, shall be deemed to include water imported from another watershed, or water conserved and saved in the watershed by a water conservation plan or works without which such water of the same watershed would have wasted, or would not have reached the underground source of supply of the owner relying upon this section.

§1010.

(a) (1) The cessation of, or reduction in, the use of water under any existing right regardless of the basis of right, as the result of the use of recycled water, desalinated water, or water polluted by waste to a degree which unreasonably affects the water for other beneficial uses, is deemed equivalent to, and for purposes of maintaining any right shall be construed to constitute, a reasonable

beneficial use of water to the extent and in the amount that the recycled, desalinated, or polluted water is being used not exceeding, however, the amount of such reduction.

(2) No lapse, reduction, or loss of any existing right shall occur under a cessation of, or reduction in, the use of water pursuant to this subdivision, and, to the extent and in the amount that recycled, desalinated, or polluted water is used in lieu of water appropriated by a permittee pursuant to Chapter 6 (commencing with Section 1375) of Part 2, the board shall not reduce the appropriation authorized in the user's permit.

(3) The use of recycled, desalinated, or polluted water constitutes good cause under Section 1398 to extend the period specified in a permit for application of appropriated water to beneficial use to the extent and in the amount that recycled, desalinated, or polluted water is used. The extension by the board shall be granted upon the same terms as are set forth in the user's permit, and for a period sufficient to enable the permittee to perfect his appropriation, while continuing to use recycled, desalinated, or polluted water.

(4) The board, in issuing a license pursuant to Article 3 (commencing with Section 1610) of Chapter 9 of Part 2, shall not reduce the appropriation authorized by permit, to the extent and in the amount that reduction in a permittee's use, during the perfection period, including any extension as provided in this section, has resulted from the use of recycled, desalinated, or polluted water in lieu of the permittee's authorized appropriation.

(5) The board may require any user of water who seeks the benefit of this section to file periodic reports describing the extent and amount of the use of recycled, desalinated, or polluted water. To the maximum extent possible, the reports shall be made a part of other reports required by the board relating to the use of water.

(6) For purposes of this section, the term "recycled water" has the same meaning as in Division 7 (commencing with Section 13000). (b) Water, or the right to the use of water, the use of which has ceased or been reduced as the result of the use of recycled, desalinated, or polluted water as described in subdivision (a), maybe sold, leased, exchanged, or otherwise transferred pursuant to any provision of law relating to the transfer of water or water rights, including, but not limited to, provisions of law governing any change in point of diversion, place of use, and purpose of use due to the transfer.

§1011.

(a) When any person entitled to the use of water under an appropriative right fails to use all or any part of the water because of water conservation efforts, any cessation or reduction in the use of the appropriated water shall be deemed equivalent to a reasonable beneficial use of water to the extent of the cessation or reduction in use. No forfeiture of the appropriative right to the water conserved shall occur upon the lapse of the forfeiture period applicable to water appropriated pursuant to the Water Commission Act or this code or the forfeiture period applicable to water appropriated prior to December 19, 1914.

The board may require that any user of water who seeks the benefit of this section file periodic reports describing the extent and amount of the reduction in water use due to water conservation efforts. To the maximum extent possible, the reports shall be made a part of other reports required by the board relating to the use of water. Failure to file the reports shall deprive the user of water of the benefits of this section.

For purposes of this section, the term "water conservation" shall mean the use of less water to accomplish the same purpose or purposes of use allowed under the existing appropriative right.

Where water appropriated for irrigation purposes is not used as a result of temporary land fallowing or crop rotation, the reduced usage shall be deemed water conservation for purposes of this section. For the purposes of this section, "land fallowing" and "crop rotation" mean those respective land practices, involving the nonuse of water, used in the course of normal and customary agricultural production to maintain or promote the productivity of agricultural land.

(b) Water, or the right to the use of water, the use of which has ceased or been reduced as the result of water conservation efforts as described in subdivision (a), may be sold, leased, exchanged, or otherwise transferred pursuant to any provision of law relating to the transfer of water or water rights, including, but not limited to, provisions of law governing any change in point of diversion, place of use, and purpose of use due to the transfer.

(c) Notwithstanding any other provision of law, upon the completion of the term of a water transfer agreement, or the right to the use of that water, that is available as a result of water conservation efforts described in subdivision (a), the right to the use of the water shall revert to the transferor as if the water transfer had not been undertaken.

§1011.5.

(a) The Legislature hereby finds and declares that the growing water needs of the state require the use of water in an efficient manner and that the efficient use of water requires certainty in the definition of property rights to the use of water. The Legislature further declares that it is the policy of this state to encourage conjunctive use of surface water and groundwater supplies and to make surface water available for other beneficial uses. The Legislature recognizes that the substantial investments that may be necessary to implement and maintain a conjunctive use program require certainty in the continued right to the use of alternate water supplies.

(b) When any holder of an appropriative right fails to use all or any part of the water as a result of conjunctive use of surface water and groundwater involving the substitution of an alternate supply for the unused portion of the surface water, any cessation of, or reduction in, the use of the appropriated water shall be deemed equivalent to a reasonable and beneficial use of water to the extent of the cessation of, or reduction in, use, and to the same extent as the appropriated water was put to reasonable and beneficial use by that person. No forfeiture of the appropriative right to the water for which an alternate supply is substituted shall occur upon the lapse of the forfeiture period applicable to water appropriated pursuant to the Water Commission Act or this code or the forfeiture period applicable to water appropriated prior to December 19, 1914. The state board may require any holder of an appropriative right who seeks the benefit of this section to file periodic reports describing the extent and amount of the reduction in water use due to substitution of an alternate supply. To the maximum extent possible, the reports shall be made a part of other reports required by the state board relating to the use of water. Failure to file the reports shall deprive the user of water of the benefits of this section.

(c) Substitution of an alternate supply may be made only if the extraction of the alternate supply conforms to all requirements imposed pursuant to an adjudication of the groundwater basin, if applicable, and meets one of the following conditions:

(1) Except as specified in paragraph (2), is from a groundwater basin for which the operating safe yield is not exceeded prior to the extraction of the alternate supply and does not cause the operating safe yield of the groundwater basin from which the alternate supply is obtained to be exceeded.

(2) Is from the Eastern San Joaquin County Basin, as described on pages 38 and 39 of the Department of Water Resources Bulletin No.118-80, for which the operating safe yield is exceeded prior to the extraction of the alternative supply, if all of the following requirements are met:

(A) The conjunctive use program is operated in accordance with a local groundwater management program that complies with the requirements of this section.

(B) The groundwater management program establishes requirements for the extraction of groundwater and is approved by a joint powers authority that meets the requirements of subparagraph (C).

(C) The joint powers authority includes each water agency overlying the contemplated points of groundwater extraction and each water agency that will share in the benefits to be derived from the local groundwater management program.

(D) By either of the following methods, the overdraft of the groundwater basin underlying the point of extraction has been reduced prior to the commencement of extraction: (i) Elimination of a volume of existing groundwater extractions in excess of the proposed new extraction. (ii) Recharge of the groundwater basin with a volume of water in excess of the proposed new extraction.

(E) The operation of that conjunctive use program ensures that the overdraft of the groundwater basin continues to be reduced.

(d) Water, or the right to the use of water, the use of which has ceased or been reduced as the result of conjunctive use of surface water and groundwater involving substitution of an alternate supply, as described in subdivisions (b) and (c), may be sold, leased, exchanged, or otherwise transferred pursuant to any provision of law relating to the transfer of water or water rights, including, but not limited to, provisions of law governing any change in point of diversion, place of use, and purpose of use due to the transfer.

(e) As used in this section, "substitution of an alternate supply" means replacement of water diverted under an appropriate right by the substitution of an equivalent amount of groundwater.

(f) This section does not apply to the Santa Ana River watershed.

(g) This section does not apply in any area where groundwater pumping causes, or threatens to cause, a violation of water quality objectives or an unreasonable effect on beneficial uses established in a water quality control plan adopted or approved by the state board pursuant to, and to the extent authorized by, Section 13170 or 13245, which designates areas where groundwater pumping causes, or threatens to cause, a violation of water quality objectives or an unreasonable effect on beneficial uses.

(h) This section shall not be construed to increase or decrease the jurisdiction of the state board over groundwater resources, or to confer on the state board jurisdiction over groundwater basins over which it does not have jurisdiction pursuant to other provisions of law.

(i) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2007, deletes or extends that date.

§1011.5.

(a) The Legislature hereby finds and declares that the growing water needs of the state require the use of water in an efficient manner and that the efficient use of water requires certainty in the definition of property rights to the use of water. The Legislature further declares that it is the policy of this state to encourage conjunctive use of surface water and groundwater supplies and to make surface water available for other beneficial uses. The Legislature recognizes that the substantial

investments that may be necessary to implement and maintain a conjunctive use program require certainty in the continued right to the use of alternate water supplies.

(b) When any holder of an appropriative right fails to use all or any part of the water as a result of conjunctive use of surface water and groundwater involving the substitution of an alternate supply for the unused portion of the surface water, any cessation of, or reduction in, the use of the appropriated water shall be deemed equivalent to a reasonable and beneficial use of water to the extent of the cessation of, or reduction in, use, and to the same extent as the appropriated water was put to reasonable and beneficial use by that person. No forfeiture of the appropriative right to the water for which an alternate supply is substituted shall occur upon the lapse of the forfeiture period applicable to water appropriated pursuant to the Water Commission Act or this code or the forfeiture period applicable to water appropriated prior to December 19, 1914. The state board may require any holder of an appropriative right who seeks the benefit of this section to file periodic reports describing the extent and amount of the reduction in water use due to substitution of an alternate supply. To the maximum extent possible, the reports shall be made a part of other reports required by the state board relating to the use of water. Failure to file the reports shall deprive the user of water of the benefits of this section.

(c) Substitution of an alternate supply may be made only if the extraction of the alternate supply meets all of the following conditions:

(1) Is from a groundwater basin for which the operating safe yield is not exceeded prior to the extraction of the alternate supply.

(2) Does not cause the operating safe yield of the groundwater basin from which the alternate supply is obtained to be exceeded.

(3) Conforms to all requirements imposed pursuant to any adjudication of the groundwater basin.

(4) Is consistent with any applicable groundwater management plan. (5) Is approved by the water supplier whose service area the water is to be transferred from, if the groundwater basin has not been adjudicated or if a groundwater management plan has not been adopted.

(d) Water, or the right to the use of water, the use of which has ceased or been reduced as the result of conjunctive use of surface water and groundwater involving substitution of an alternate supply, as described in subdivisions (b) and (c), may be sold, leased, exchanged, or otherwise transferred pursuant to any provision of law relating to the transfer of water or water rights, including, but not limited to, provisions of law governing any change in point of diversion, place of use, and purpose of use due to the transfer.

(e) As used in this section, "substitution of an alternate supply" means replacement of water diverted under an appropriative right by the substitution of an equivalent amount of groundwater.

(f) This section does not apply to the Santa Ana River watershed.

(g) This section does not apply in any area where groundwater pumping causes, or threatens to cause, a violation of water quality objectives or an unreasonable effect on beneficial uses established in a water quality control plan adopted or approved by the state board pursuant to, and to the extent authorized by, Section 13170 or 13245, which designates areas where groundwater pumping causes, or threatens to cause, a violation of water quality objectives or an unreasonable effect on beneficial uses.

(h) This section shall not be construed to increase or decrease the jurisdiction of the state board over groundwater resources, or to confer on the state board jurisdiction over groundwater basins over which it does not have jurisdiction pursuant to other provisions of law.

(i) This section shall become operative on January 1, 2007.

§1014

The transfer of water, or the offer of water for transfer, shall not cause, or be the basis for, a forfeiture, abandonment, or modification of any water right, contract right, or other right to the use of that water. An offer of water for transfer, contract negotiations, or a transfer agreement shall not be used as evidence of waste or unreasonable use, or of cessation of use, of the water made available for transfer.

§1015

During the term of a temporary change, as defined in Section 1728, if an enforcement action or other proceeding is commenced that alleges that the use of water violates Section 2 of Article X of the California Constitution, Sections 100, 101, 1410 and 1675, or any other legislative, administrative, or judicial limitation on the water that is subject to that water transfer and the water involved is, at the time of the alleged violation, subject to a water transfer, the determination of the alleged violation shall be based on an assessment of the transferee's use of transferred water. If a transferee's right to use transferred water is divested, in whole or in part, on the basis of the transferee's abandonment, forfeiture, waste, or unreasonable use of the transferred water, the divested portion of the right shall revert immediately to the transferor.

§1016

(a) At the conclusion of the term of water transfer agreement, all rights in, and the use of, the water subject to the transfer agreement revert back to the transferor.

(b) After the conclusion of the term of a water transfer agreement, the transferee or the beneficiary of the transfer shall not do either of the following:

(1) Bring any claim for a continuation of the water supply made available by the agreement.

(2) Claim any right to a continued supply of water as a result of the transfer, based on reliance, estoppel, intervening public use, prescription, water shortage emergency, or unforeseen or unforeseeable increase in demand, or any other use.

§1017

The beneficial use of water pursuant to a transfer or exchange authorized pursuant to Chapter 6.6 (commencing with Section 1435) of, Chapter 10 (commencing with Section 1700) of, Chapter 10.5 (commencing with Section 1725) of, Part 2, or any other provision of law, shall constitute a beneficial use of water by the holder of the permit, license, water right, or other entitlement for use that is the basis for the transfer or exchange, and shall not affect any determination or forfeiture applicable to water appropriated pursuant to the Water Commission Act or this code or water appropriate prior to December 19, 1914.